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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,802	10/11/2001	Shoichi Taneichi	0445-0509P	8999

2292 7590 04/21/2003

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EXAMINER

WATKINS III, WILLIAM P

ART UNIT	PAPER NUMBER
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1772

10

DATE MAILED: 04/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/973,802

Applicant(s)

TANEICHI ET AL. *je*

Examiner

William P. Watkins III

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 08.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this

Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-3, 5, 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vander Wielen et al. (U.S. 4,720,415) in view of Schleinz et al. (U.S. 5,612,118).

Vander Wielen et al. teaches a gathered top layer joined to an elastic layer. The gathered layer may be a carded web (col. 12, lines 15-20). Elastic fibers are taught as forming the elastic layer of Vander Wielen et al. (col. 4, lines 60-65). Schleinz et al. teaches that a joined layer can be gathered by elastic fibers that are heat shrunk (col. 8, lines 1-10, col. 4, lines 35-40). The instant invention claims the use of elastic fibers, which heat shrink to form a gathered web. It would have been obvious to one of ordinary skill in the art to use heat shrink fibers to gather the web of Vander Wielen et al. because

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of the teaching of Schleinz et al. that heat shrinking can be used instead of elastic expansion before bonding in order to construct a gathered web laminate. Selection of specific fiber density and degree of elastic expansion is dependent on the final application and is taken as being within the ordinary skill of the art absent unexpected results.

3. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vander Wielen et al. in view of Schleinz et al. as applied to claims 1-5 and 8 above, and further in view of Zelazoski et al. (U.S. 5,536,555).

Zelazoski et al. teaches putting holes in gathered webs in order to allow good fluid intake rates (col. 2, lines 1-15). The instant invention claims a gathered web with perforations. It would have been obvious to one of ordinary skill in the art to have perforated the web of Vander Wielen et al. in view of Schleinz et al. in order to have good fluid intake because of the teachings of Zelazoski et al.

4. Applicant's argument's filed 04 February 2003 have been considered but are not considered to be persuasive.

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Applicant argues that the elastic layer of Schleinz et al. is a sheet or strand or rope and not a fibrous aggregate. As a first point the examiner notes that a standard definition of a strand is a group of twisted fibers (Webster's II, New Riverside University Dictionary, 1984). Thus the elastic layer of Schleinz et al. can be considered as a fiber aggregate. The examiner also notes that elastic fibers are taught by Vander Wielen et al. (col. 4, lines 60-65). One seeking modify the elastic material of Vander Wielen et al. by the teaching of Schleinz et al. to use a heat shrink elastic material would be inclined to keep the material of Vander Wielen et al. as fibers absent a motivation to use a different material form. Schleinz et al. does not forbid the use of fibers, and as noted above teaches strands, which are made of fibers. Regarding claim 9, Vander Wielen et al. teaches use of a carded web as noted in the above rejection.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 703-308-2420. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

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WW/ww

April 18, 2003

A handwritten signature in cursive script, reading "William P. Watkins III". The signature is written in dark ink and is positioned above the printed name.

**WILLIAM P. WATKINS III
PRIMARY EXAMINER**